IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 372 of 2005

Between:

M/s.Three Sky Foods Pvt.Ltd., rep by its Authorised Signatory

Running under O/o.1Floor,Trendeset Towers, Road.No2, Banjara

Hills, Hyderabad -33.

..... PETITIONER

AND

1 Govt. of Andhra Pradesh Depart of Excise, rep by its Secretary Hyderabad.
2 The Commissioner of Prohibition & Excise, Govt. of A.P.,
3 The Prohibition & Excise Superintendent, Hyderabad Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus by declaring Rule 37(2) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 as amended by G.O.Ms.No.345 Revenue (Excise.II) Dept dt 17-6-2002 and impugned letter dt 17-01-2005 issued by the 3rd respondent in regard to the timing to transact business in liquor of the petitioner when compared to the Bar and Restaurants of Star Hotels as illegal, unconstitutional and violative of Article 14 of the Constitution of India and consequently direct the respondents to permit the petitioner to transact business in liquor till 12.00 Midnight in parity with the Bar and Restaurants of the Star Hotels.

Counsel for the Petitioner:MR.B.CHANDRASEN REDDY

Counsel for the Respondents No.1 to 3: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

Petitioner is a private limited company. As part of its activities, it established a bar and restaurant under the name and style “Touch Bar & Restaurant”. It obtained necessary permissions and licenses from the authorities concerned, including a licence in form IL 17 under Rule 23 of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short ‘the Rules’). The petitioner claims that the facilities provided by it in the bar and restaurant are of very high standard and are, in fact, comparable to those provided by the five star hotels. It also claims that it has received accreditation from the Tourism department as well as the Director General of Foreign Trade in the matter of providing high-class services, to promote tourism and foreign trade.

The grievance of the petitioner is that it is being treated as though it holds an ordinary “on licence” distinct from an “on licence” in respect of three star hotels and above in the matter of the hours for transacting the business. It made an application to the third respondent seeking permission to serve the customers with liquor till 12.00 mid night. Through his letter dated 17.01.2005, the third respondent refused to accede to the request, by citing the relevant rule. Hence, this writ petition.

Heard Sri B. Chandrasen Reddy, learned counsel for the petitioner, and learned Government Pleader for Prohibition & Excise.

The Rules govern the matter of grant of licenses of various categories as well as the conditions for running the business on the strength of such licenses. Sub-Rule (2) of Rule 37 of the Rules prescribed the timings for transacting the business by the holders of IL 17 licence. It reads as under:

> "The licencee in case of "on licence" shall transact the business in liquor from 10.00 A.M. to 11.00 P.M. only. However, the restaurant may supply food till 12-00 mid night or as notified by the Government from time to time.
>
> Provided that the licenses in the case of "on licence" in respect of (3) star and above hotels shall transact business from 10.00 a.m. to 12.00 mid night.
>
> Provided further that the Commissioner of Prohibition & Excise with the approval of the Government may bring about any change during the course of Excise years in the hours of business and the licensees shall observe such changed timings accordingly."

The expression "on licence" refers to the holders of licenses. A dichotomy is maintained between the bars and restaurants, which are established in hotels of three star and above, and those which are outside that category. For the former, it is permissible to serve liquor between 10.00 A.M. and 12.00 mid night, whereas latter are entitled to serve liquor only up to 11.00 P.M. They can, however, serve food in the restaurants up to 12.00 mid night.

From a perusal of the material placed before this Court, it is evident that the petitioner had established a bar and restaurant of very high standard which is comparable to the hotels of three star and above. The turn over, particularly in terms of foreign exchange clearly indicates the same. The object of permitting the hotels of three star and above to serve the liquor up to 12.00 mid night is mainly to enable them to entertain tourists or businessmen of a particular standard. If the petitioner is undertaking same activity, there does not exist any basis to deny such benefit to it. It is true that the Rule is very clear and unambiguous in this regard. At the same time, it should not be forgotten that the Rule making authority did not contemplate establishment of bars of high standard known as 'Fine Dine Restaurants' with the main object of serving the foreign tourists as well as the customers of high social status. It is stated that there are only eight restaurants of such a type in the city of Hyderabad. Instead of relying upon the self-serving statements of the petitioner, the third respondent can insist on accreditation by a competent agency. It is not as if any substantial or radical exemption is required in this regard. The whole dispute is about according permission to serve the liquor for one more hour,

that too at the late hours in the night. Such a measure cannot be expected to result in any traffic congestion or other related problems.

For the foregoing reasons, the writ petition is disposed of directing that it shall be open to the petitioner to file an application before the third respondent, duly enclosing the necessary accreditations given to it by the Department of Tourism or Director General of Foreign Trade, and on a consideration of the same, the third respondent shall pass appropriate orders, in the matter of according permission to the petitioner to enable it to serve the liquor in its bar and restaurant up to 12.00 in the mid night on par with three star hotels and above. There shall be no order as to costs.

24.01.2005

ksld

To

1 Govt. of Andhra Pradesh Depart of Excise, rep by its Secretary Hyderabad.
2 The Commissioner of Prohibition & Excise, Govt. of A.P.,
3 The Prohibition & Excise Superintendent, Hyderabad Dist.

4 Two CCs. to the G.P. for Prohibition & Excise, High Court of A.P.,

Hyderabad (OUT).

5 Two CD copies.